

Correction

In a recent edition of this newsletter, we incorrectly stated that the current rules do not permit a municipality to adopt a holding tank ordinance that will allow a holding tank for first time systems or for seasonal conversions in the shoreland zone. After further consultation with the Department of Human Services (DHS) staff who administer the Subsurface Wastewater Disposal Rules (Rules), and their attorney, we have

learned that DHS has ruled that holding tank ordinances that allow holding tanks for first time residential systems may be legal at this time. The Shoreland Zoning Unit is concerned over this more lenient interpretation of the Rules and plans to work with the Department of Human Services staff to eliminate what we believe is a loophole that is not consistent with the purposes of the shoreland zoning law.

***A friendly reminder:***

On a biennial basis, municipal code enforcement officers must file a report with the Department summarizing essential transactions of that office. The report, required by law (Title 38 MRSA section 441.3.C), must include permit as well as enforcement data. By the time you receive

this newsletter, all code officers should have filed their respective reports with the Department. If you did not receive a reporting form, or have misplaced the form, please contact Richard Baker at 287-7730.

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SHORELAND ZONING NEWS

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**Inside this issue:**

Legislative Update	1
Enforcement Cases Settled	2
Planting a Buffer	3
Corrections and Reminder	4

**Please Share**

*For over ten years, the Shoreland Zoning News has been helping town officials better understand the common issues surrounding shoreland zoning administration and enforcement. At least that is the feedback we've been getting. Unfortunately, we also hear that the News is not getting to everyone who would like to see it.*

*We keep our costs and mailing list manageable by sending four copies to one locally designated contact person to distribute to the selectmen, planning board, appeals board and code officer. If you are the contact person, please make sure the newsletters reach the other town officials.*

Legislative Update

There were no changes to the Mandatory Shoreland Zoning Act during the most recently ended legislative session. However, two bills that received significant attention are of interest to municipal officials. LD 2665 sought to establish statewide standards for timber harvesting in shoreland areas. If adopted, the standards in unorganized townships would be the same as those in organized municipalities. The Legislature did not approve LD 2665 but passed a Resolve requiring the Department of Conservation to further study the matter and to report back to the Legislature during the next session. The Maine Municipal Association has notified towns of this Resolve, and we have received questions regarding when the Department of Conservation will be granted jurisdiction over timber harvesting. Please note that at this time timber harvesting within shoreland areas is still locally administered.

The other bill of interest was passed as PL 2002 Chapter 618. This law gives the Department of Environmental Protection the authority to regulate vegetative cutting adjacent to the smaller streams that are not regulated under local shoreland zoning ordinances. The effect of the law, in conjunction with newly adopted Department rules, will be that vegetative buffers will be required adjacent to small streams. The legislation is an amendment to the Natural Resources Protection Act and will be administered and enforced by the DEP. The DEP expects to begin administering the buffer requirements on September 1, 2002. In the initial stages of the administration of this new requirement, public education will be an important strategy. You will be hearing more about this law in the coming weeks.

## Enforcement Cases Settled

The Department is pleased to report that its enforcement case, State of Maine, Department of Environmental Protection, and Attorney General v. Inhabitants of the Town of Damariscotta, Maine and Lake Pemaquid, Inc. has been settled. You may recall that this case began several years ago when the Department learned that 21 cabins had been placed within 100 feet of Lake Pemaquid by the campground owners, Lake Pemaquid, Inc. After unsuccessfully attempting to persuade the town of Damariscotta to take action in regard to the cabins, the State sued both the Town and the campground in Superior Court.

The State and the Town agreed to a consent agreement whereby the town would assist in the prosecution of the case, and agree to diligently administer its ordinance in the future. After trial, Superior Court Justice Donald Marden ruled that 18 cabins were in violation and that they must be moved back at least 100 feet from the lake (3 of the 21 were deemed to be grandfathered). He also ordered the owners to pay fines of more than 8.4 million dollars, after finding that the violations were willful.

Lake Pemaquid, Inc. appealed the decision to the Maine Supreme Judicial Court, where oral arguments were held earlier this year. However, before the Supreme Court ruled on the appeal, the State of Maine and Lake Pemaquid Inc. entered into a settlement agreement. Lake Pemaquid, after having already moved the cabins away from the lake, will pay the State of Maine a monetary penalty of \$350,000 over a five-year period.

The Department believes that this agreement is a fair and reasonable conclusion to a long-term enforcement matter.

In a separate enforcement case the DEP has learned that the town of Phippsburg has settled a case relating to excessive tree cutting in the 75 foot buffer strip along a tidal water body. The landowner had created cleared openings within the buffer for a view of the New Meadows River and failed to retain the required "points" of trees. After the owner refused to enter a consent agreement that included re-planting and a \$9,280 fine, the town proceeded to court. On November 21, 2001, the town won a judgment against the landowner which included a \$32,500 fine as well as replanting.

The penalty originally proposed by the town was much less than the amount of the final agreement. A little cooperation on the part of the violator would have saved him a significant amount of money in the end.



## Planting a Vegetated Buffer

Buffer strips have long been recognized as a good way to enhance and protect water quality. By now, most of us know that vegetated buffers prevent soil erosion, filter non-point source pollution, and provide visual screening for the shoreline. But if you ask ten people what makes a good buffer, you would probably get ten different answers. For many of us, trying to describe a good buffer is like trying to describe fine art: hard to do, but easy to spot. These differences in opinion can make creating or restoring a vegetated buffer a confusing proposition.

By keeping the following components of a buffer in mind, creating or restoring a functioning buffer may become a little easier.

**Flow path:** Good vegetated buffers break up the flow path of surface water runoff in several ways. The living vegetation intercepts rain drops and reduces their energy before hitting the ground; the dead vegetation creates a duff layer. In creating or enhancing a vegetated buffer, channelized flow should be avoided. Meandering paths prevent direct runoff to the resource.

**Vegetation:** The types of buffer vegetation are important, but not as important as the combination in which they are used. Diver-

sity is important in creating or restoring a buffer. A mix of trees, shrubs, and herbaceous plants will help develop a good duff layer and enhance the uptake and transformation of nutrients that affect water quality, like nitrogen and phosphorus. When creating or enhancing a buffer, spacing and light requirements of the plantings should be taken into account.

**Duff:** Most people overlook the duff layer, and consider it trash that should be raked up every fall. The duff layer is a very important part of a vegetated buffer. Most of the biologic activity occurs within the duff layer, and many microorganisms work to recycle nutrients there. Physically, the duff layer stabilizes the surface of the soil and keeps the mineral soil from being eroded away. Duff is typically uneven and prevents a channelized flow path, which promotes slow infiltration of surface water. When creating or restoring a buffer over bare soils, a good temporary substitute for duff is composted bark mulch. There are variety of sources and types available on the market today.

Vegetated buffers also provide shade, privacy, protection from noise and the elements, and a home for birds and small mammals.

Got a shoreland zoning question or issue you'd like to share with others? The Question and Answer section of the *Shoreland Zoning News* is a good forum for spreading the word. Just drop a note or a telephone message to the shoreland zoning staff at the DEP, and we'll try to include it in an upcoming newsletter.